

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

LEE R. BREAU	:	DOCKET NO. 04-1145
VS.	:	JUDGE MINALDI
JO ANN B. BARNHART, COMMISSIONER OF SOCIAL SECURITY	:	MAGISTRATE JUDGE WILSON

REPORT AND RECOMMENDATION

Presently before the court is plaintiff's Petition for Attorney's Fees and Expenses Under the Equal Access to Justice Act, 28 U.S.C. §2412 (EAJA). [doc. # 16]. This matter has been referred to the undersigned magistrate judge for a report and recommendation pursuant to 28 U.S.C. §636(b)(1)(B).

By judgment dated July 26, 2005, this matter was reversed and remanded for further proceedings pursuant to the fourth sentence of 42 U.S.C. §405(g). Thus, plaintiff qualifies as a prevailing party. His attorney seeks fees of \$5,031.25 (40.25 hours of work at \$125/hour), plus \$13.26 for mailing expenses.

EAJA is a partial waiver of sovereign immunity, and thus must be strictly construed in the government's favor. *Tex. Food Indus. Ass'n v. USDA*, 81 F.3d 578, 580 (5th Cir.1996) (citation omitted). As the fee applicant, Breau has the burden of demonstrating the reasonableness of the number of hours expended on the claim. *Von Clark v. Butler*, 916 F.2d 255, 259 (5th Cir.1990).

Defendant opposes the instant motion on the basis that the number of hours claimed by

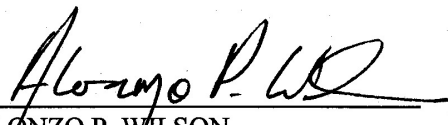
plaintiff's counsel is excessive.¹ The Commissioner argues, *inter alia*, that the amount of time claimed by counsel to research, prepare, and write plaintiff's brief is unreasonable. The court agrees. We have reviewed the record, briefs, and plaintiff's itemization of services. The undersigned finds that the number of hours claimed by plaintiff's counsel for review, research, and brief preparation is not supported under the circumstances of this case. The number of hours sought by counsel will be reduced to 30.

Accordingly, it is recommended that the attorney's fees be fixed at \$3,750.00 (30 hours at \$125/hour). It is further RECOMMENDED that \$ 13.26 be awarded for mailing expenses.

Under the provisions of 28 U.S.C. §636(b)(1)(C), the parties have ten (10) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 21st day of October, 2005.


ALONZO P. WILSON
UNITED STATES MAGISTRATE JUDGE

¹ Defendant did not object to the \$125/hour rate claimed by plaintiff's counsel.